**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR**

**TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929**

**SA.No. 107 of 1993(D)**
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**AS.145/1989 of DISTRICT COURT, THALASSERY**
**OS.37/1980 of MUNSIF COURT, KUTHUPARAMBA**
**.....**

**APPELLANTS/ APPELLANTS/ PLAINTIFFS**
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1. **CHEMILODEN JANU, D/O.MATHA, AGED 59 YEARS, NO OCCUPATION, RESIDING AT KEEZHALLUR AMSOM, EDAYANNUR, DESOM.**

2. **SISTER NARAYANI, AGED 46 YEARS, NO OCCUPATION, RESIDING AT KEEZHALLUR AMSOM, EDAYANNUR DESOM.**

**BY ADV. SRI.K.T.SHYAMKUMAR**

**RESPONDENTS: RESPONDENTS/ DEFENDANTS**
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1. **CHOOLIKANDI CHIRUTHA, W/O.RAMAN, AGED 72 YEARS, NO OCCUPATION, RESIDING AT KEEZHALLUR AMSOM, EDAYANNUR DESOM.**

2. **DAUGHTER, DO. NANI, AGED 44 YEARS, NO OCCUPATION, RESIDING AT KEEZHALLUR AMSOM, EDAYANNUR DESOM.**

3. **SISTER DO. LAKSHMI. AGED 42 YEARS NO OCCUPATION , RESIDING AT KEEZHALLUR AMSOM , EDAYANNUR DESOM.**

4. **BROTHER, DO. LEKSHMANAN, AGED 40 YEARS, AGRICULTURIST,RESIDING AT KEEZHALLUR AMSOM, EDAYANNUR DESOM.**

**BY ADV. SRI.M.A.MANHU**
**SRI.M.A.FAYAZ**

**THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 29 /05 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**S.A. NO.107/1993**

**JUDGMENT**

**NO REPRESENTATION FOR APPELLANT. APPELLANT CALLED. ABSENT. DISMISSED FOR DEFAULT.**

**29.05.2007** **SD/- M.SASIDHARAN NAMBIAR, JUDGE**

**/TRUE COPY/**

**P.A. TO JUDGE**

**M.SASIDHARAN NAMBIAR,J.**

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S.A.NO.107 OF 1993

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Dated 11th September 2007

**J U D G M E N T**

Plaintiffs in O.S.37 of 1980 on the file of Munsiff court, Kuthuparamba are appellants. Defendants are respondents. Appellants instituted the suit seeking a decree for permanent prohibitory injunction which was subsequently amended seeking an alternative prayer of recovery of possession on the strength of title. Plaint schedule property is having an extent of 85 cents in R.S.No.102/2 of Keezhallur village. Case of appellant is that plaint schedule property originally belonged to Theroor Devaswam and was obtained on lease by Nambokil Matha and others and thereafter properties were divided as per partition deed and plaint schedule property was allotted to the share of Nambokil Matha, Madhavi and Kumaran and on the death of Kumaran as bachelor his rights devolved on Matha and Madhavi and under Ext.A2 assignment deed Madhavi sold 61 cents of plaint schedule property in favour of appellants and appellants purchased jenm

right from the Land Tribunal and obtained Ext.A5 purchase certificate for that portion of the property and remaining 24 cents which was in the possession of Madhavi was assigned to appellant under Ext.A11 assignment deed and since then appellants have been in possession of the property under Ext.A11 also and they have title to the property and respondents have no manner of right, title or possession of property and they are to be restrained by permanent prohibitory injunction and even if it is found that respondents are in possession of the property, on the strength of their title appellants are entitled to recover possession of the same. Respondents in the written statement contended that Matha and others had only right over 61 cents of property which was assigned to appellants under Ext.A2 and no other property was left with Madhavi to be assigned under Ext.A11 and appellant did not have any right or title to the property covered under Ext.A11 and therefore appellants are not entitled to decree sought for.

2. Suit was originally dismissed by trial court. In appeal filed by appellants the suit was remanded for fresh disposal. Learned Munsiff after remand, on the evidence of Pws.1 and 2, Dws.1 to 4, Exts.A1 to A20, B1

to B20 and C1 to C8, dismissed the suit holding that appellants did not establish title to the disputed 24 cents of plaint schedule property covered under Ext.A11. Learned Munsiff found that northern boundary of Ext.A1 is shown as property of respondents and therefore Madhavi had no property to north of the property covered under Ext.A2 to be assigned under Ext.A11 and appellant did not derive any title under Ext.A11 and therefore appellants are not entitled to the decree sought for. Appellants challenged the decree and judgment before District court, Thalassery in A.S.145 of 1989. Learned District Judge on re-appreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in second appeal.

3. Appeal was admitted formulating following substantial questions of law.

> 1) Whether on the facts and circumstances of the case courts below were justified in holding that appellants have not proved title to plaint B schedule property.
>
> 2) Whether courts below correctly complied with the directions in the order of remand in A.S.39 of 1985.

3) Whether courts below were justified in denying title of appellants to plaint B schedule property.

4. Learned counsel appearing for appellants and respondents were heard.

5. Right and title of appellants to the property covered under Ext.A2, which is the plaint A schedule property, is not disputed. Dispute is with regard to the plaint B schedule property. Case of appellants is that they have title to the property under Ext.A11 assignment deed executed by Madhavi. What was contended by appellants is that the entire 85 cents comprised in R.S.No.110/A and 110/2 of Keezhallur village belongs to Nambokil Matha and others and they obtained it on lease from jenm Theroor devaswam and thereafter as per partition in their family that 85 cents was allotted to Matha, Madhavi and Kumaran and on the death of Kumaran his rights also devolved on Matha and Madhavi and Madhavi assigned plaint A schedule property having an extent of 61 cents under Ext.A2 in favour of appellants and the remaining 24 cents which is plaint B schedule property belongs to Madhavi and she assigned it under Ext.A11 to the appellants. Therefore appellants can

succeed in the suit only on establishing that Madhavi had title to plaint B schedule property, which was transfered under Ext.A11. That fact could be established only by proving that Madhavi obtained 24 cents as per the partition. But the partition deed was not produced. Therefore there is no evidence to prove that Madhavi had title to plaint B schedule property or Madhavi and Matha had any right over any extent of property in excess of what was transfered under Ext.A2 to the appellants. It is more so, because the northern boundary of property assigned under Ext.A2 is shown as property of respondents and not the remaining property obtained by them under the partition deed or the property of Madhavi later assigned under Ext.A11. In such circumstances, courts below rightly found that appellants did not establish their title to the plaint B schedule property. I do not find any merit in the appeal in the light of the factual findings.

Appeal is dismissed. No cost.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

**JUDGMENT**

S.A.NO.107 OF 1993

11th September 2007

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